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Supreme Court, U.S.
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No. 92-1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

CORDELIA ANN BODIE,
Petitioner,

vs.

CITY OF HUNTSVILLE, et al.,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether certiorari should be granted to review a judgment which reaches the correct result merely because one asserted ground for the judgment, a "heightened pleading requirement" for civil rights actions, is incorrect.

Whether costs were properly taxed to the petitioner when her action was dismissed for failure to state a claim and the dismissal was affirmed on appeal.

PARTIES

Cordelia Ann Bodie, Petitioner;

Errol Fitzpatrick, Risk Manager, City of Huntsville, Alabama, Respondent;

Larry P. Hall, Risk Management Department, City of Huntsville, Alabama, Respondent;

Jeff Hamilton, Employee of The Health Care Authority of the City of Huntsville, Alabama, Respondent;

Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital, Respondent;

Steve Hettinger, Mayor of the City of Huntsville, Alabama, Respondent;

City of Huntsville, Alabama, Respondent;

Ernest Kaufmann, Council Member, City of Huntsville, Alabama, Respondent;

Bill Kling, Council Member, City of Huntsville, Alabama, Respondent;

Richard Liles, Administrative Assistant to the Mayor of the City of Huntsville, Respondent;

Charles Perry, Respondent;

James Putnam, Council Member, City of Huntsville, Alabama, Respondent;

Richard Showers, Council Member, City of Huntsville, Alabama, Respondent;

James D. Thornton, III, Respondent;

James Wall, Jr., Council Member, City of Huntsville, Alabama, Respondent;

Wikle, Thornton, Holcombe and Associates, Inc., Respondent;

The Healthcare Authority of the City of Huntsville, d/b/a Huntsville Hospital, has no parent company and no subsidiaries which are not wholly owned.

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No. 92-1968

IN THE

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OCTOBER TERM, 1992

CORDELIA ANN BODIE,
Petitioner,

vs.

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Petition for Writ of Certiorari to the
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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF OPINIONS BELOW

The opinion of the Eleventh Circuit affirming the district court's dismissal of the petitioner's action is unreported (App. A, *infra*, A1-A2). Also unreported are the district court's order dismissing the case (App. B, *infra*, A3-A4) and the Eleventh Circuit's order denying the petition for rehearing filed in that court (App. C, *infra*, A5).

STATEMENT OF JURISDICTION

The Court has discretionary jurisdiction to grant certiorari in this case pursuant to 28 U.S.C. § 1254(1). The Court of Appeals for the Eleventh Circuit entered its judgment in favor of the respondents and issued its opinion on March 3, 1993. The petitioner filed a petition for rehearing on March 22, 1993, and the petition was denied on April 12, 1993. The petitioner filed a petition for writ of certiorari in this Court on June 7, 1993.

STATUTES INVOLVED

42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This civil action began on January 10, 1992 when the petitioner, Cordelia Ann Bodie, filed a complaint pursuant to 42 U.S.C. § 1983 in the U.S. District Court for the Northern District of Alabama. (R. 1-1-1). The complaint named fifteen separate individuals and entities as defendants and contained four counts in which the petitioner alleged that the defendants had conspired to deprive her of her civil rights under color of state law.

The petitioner is a registered nurse formerly employed by the City of Huntsville, Alabama at the City Clinic. (R.1-3-2). The

named defendants included the City of Huntsville, the Mayor of the City, all members of the Huntsville City Council, various employees of the City, the Health Care Authority of the City of Huntsville, an employee of the Health Care Authority, an insurance agency in Huntsville, and a principal in that agency. (R. 1-1-3-4). On February 3, 1992, the petitioner filed an amended complaint in which she essentially set forth the same claims contained in the original complaint without materially changing her allegations. (R. 1-3-1).

With regard to the respondents Jeff Hamilton and the Health Care Authority of the City of Huntsville ("Huntsville Hospital"), the complaint, as amended, appears to allege that those defendants 1) conspired with the other defendants to deprive the petitioner of the employment of her choosing without due process and in violation of the Fourteenth Amendment to the United States Constitution, 2) conspired with the other defendants to "freeze out" the petitioner from her employment at the Huntsville City Clinic by "requiring her to work in an unsafe and unsanitary work environment" and thereby depriving the petitioner of "equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution," 3) conspired with the other defendants to compel the petitioner to leave her employment with the City of Huntsville in retaliation for her pursuit of an employee grievance, in violation of the petitioner's First Amendment rights of free speech and petition, and 4) conspired with the other defendants "to interfere with and impair the value of" a personal professional liability insurance policy held by the petitioner, in violation of Article I, Section 10, of the Constitution of the United States. (R. 1-3-9-12).

The above claims actually appear to have been asserted against each of the defendants and were asserted against Hamilton and Huntsville Hospital only insofar as they fell within the general category of "defendants." The only specific allegations concerning conduct on the part of Hamilton and the Hospital

were that 1) Hamilton brought health care consultants to the City Clinic in November 1988 to aid him in gathering information regarding the manner in which the clinic was operated, and 2) Huntsville Hospital subsequently submitted to the City of Huntsville a report concerning Hamilton's findings. (R. 1-2-6-7).

All defendants filed motions to dismiss the action on the grounds that, *inter alia*, the petitioner had failed to state a claim upon which relief could be granted. (R. 1-5-1, 1-4, 5, 7, 8, 10). On April 22, 1992, the district court entered an order granting the motions to dismiss filed by the defendants. (R. 1-13-1). The district court stated:

> After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than 20 pages of single-spaced, typewritten, legal silliness. . . . The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. . . . Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right . . . As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney's fees under 42 U.S.C. § 1988.

(R. 1-13-1, 2).

The petitioner filed an appeal to the Court of Appeals for the Eleventh Circuit on May 15, 1992. (R. 1-19-1). On March 3, 1993, the Eleventh Circuit affirmed the judgment of the district court and issued an unpublished opinion stating that "Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right." A petition for rehearing filed on March 22, 1993 was denied on

April 12, 1993, and the petitioner filed a petition for writ of certiorari in this Court on June 7, 1993.

SUMMARY OF ARGUMENT

The petition for writ of certiorari is due to be denied because the judgment of the Eleventh Circuit was correct. The "heightened pleading requirement" was merely one reason asserted by the Eleventh Circuit for holding that the dismissal of the petitioner's action was proper. The additional grounds stated in the opinion of the Eleventh Circuit are not in conflict with any decision of this Court and, standing alone, required an affirmance of the district court's dismissal of the petitioner's claims. Moreover, the district court's decision could have been appropriately affirmed on grounds not referred to in the opinion of the Eleventh Circuit, as the petitioner's pleadings themselves affirmatively demonstrated that all claims presented against these respondents were barred by the applicable statute of limitations.

The petitioner's contention that certiorari is due to be granted because the courts below somehow erred in taxing costs to the petitioner is also without merit. The respondents prevailed both in the district court and on appeal, and the assessment of costs to the petitioner was appropriate.

ARGUMENT

I. THE JUDGMENT OF THE ELEVENTH CIRCUIT WAS CORRECT AND THE PETITION FOR WRIT OF CERTIORARI IS DUE TO BE DENIED BECAUSE, UNDER ANY STANDARD, THE PETITIONER FAILED TO STATE A CLAIM FOR WHICH RELIEF COULD BE GRANTED.

The petitioner contends that certiorari is due to be granted because, in the opinion issued by the Eleventh Circuit, that Court relied in part upon the "heightened pleading requirement" recently invalidated by this Court in *Leatherman v. Tarrant County Narcotics Unit*, _ U.S. __, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993). However, this Court reviews judgments and not opinions. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct 2778, 81 L.Ed.2d 694 (1984). A correct judgment will not be disturbed even if based upon an inappropriate ground or a wrong reason. *Helvering v. Gowan*, 302 U.S. 238, 58 S.Ct. 154, 82 L.Ed.2d 244 (1937). The petition for writ of certiorari is due to be denied because a dismissal of the petitioner's action was required for several reasons, some of which were stated in the Eleventh Circuit's opinion and in the district court's order of dismissal.

Each of the lower courts correctly recognized that the petitioner failed to allege a violation of any federally protected right that would be actionable under 42 U.S.C. § 1983. The petitioner also presented no factual averments which, if proven, would support the bold conclusion that these respondents conspired to violate the petitioner's civil rights. Finally, the allegations contained in the complaint, as amended, indicated that the petitioner's claims were barred by the applicable statute of limitations.

A. The petitioner failed to allege a violation of any federally protected right which would give rise to a cause of action under Section 1983.

Even a cursory review of the pleadings filed by the petitioner reveals that she wholly failed to allege that these respondents took any action to violate her civil rights. The district court specifically noted that there was a complete failure to "allege any violation of any federally protected right" (R. 1-13-1), and the Eleventh Circuit observed that the petitioner "failed to allege how the defendants abridged her free speech rights or any other constitutional right." Even in the absence of a "heightened pleading requirement," the petitioner simply did not state a cause of action under Section 1983.

The petitioner's failure to aver facts indicating that her constitutional rights were violated in a manner which might give rise to a cause of action under Section 1983 required the district court to dismiss her action and required the Eleventh Circuit to affirm. It is well-established that a complaint must allege the necessary elements of a claim in order to withstand a motion to dismiss. *Strauss v. City of Chicago*, 760 F.2d 765 (7th Cir. 1985); *District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077 (D.C. Cir. 1984); *Blum v. Morgan Guar. Trust Co. of New York*, 709 F.2d 1463 (11th Cir. 1983). The allegations contained in the petitioner's complaint and amended complaint were insufficient under the notice pleading provisions of Rule 8 of the Federal Rules of Civil Procedure.

B. The petitioner's failure to allege any facts whatsoever to support her allegation that these respondents were guilty of a conspiracy to violate her civil rights required the dismissal of her action.

The petitioner's complaint and amended complaint alleged that Jeff Hamilton and Huntsville Hospital initiated a study of the Huntsville City Clinic and made certain recommendations to the

City concerning future management of the clinic. There were no other specific allegations of conduct by Huntsville Hospital or Hamilton.

These allegations, even if presumed true as required on a Rule 12(b)(6) motion to dismiss, do not in any way support the theory that Hamilton and Huntsville Hospital were involved in a conspiracy to violate the petitioner's civil rights. It has long been the rule in the Eleventh Circuit and its predecessor circuit that a complaint cannot survive a motion to dismiss if it merely sets forth conclusory allegations without alleging facts which, if proven, would warrant the relief sought. *Davidson v. State of Georgia*, 622 F.2d 895 (5th Cir. 1980).

C. Dismissal of the petitioner's action was appropriate because it was barred by the applicable statute of limitations.

In *Owens v. Okure*, 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed. 2d 594 (1989), a unanimous Court held as follows:

> . . . where state law provides multiple statues of limitations for personal injury actions, courts considering § 1983 claims should borrow the general or residual statute for personal injury actions.

Owens, 109 S.Ct. at 582. In an earlier footnote, the Court in *Owens* specifically cited *Alabama Code* § 6-2-38(l) (1975) as an example of a "general provision which applies to all personal injury actions." *Id.* at 579. Based upon the above, the Eleventh Circuit held that "after *Owens*, the two year statute of limitations of *Ala. Code* § 6-2-38(l) applies to section 1983 actions in Alabama." *Jones v. Preuit*, 876 F.2d 1480, 1483 (11th Cir. 1989).

In cases involving a continuing conspiracy to violate civil rights, the statute of limitations runs from the occurrence of each act in furtherance of the alleged conspiracy. *Jimenez v. Toledo*,

604 F.2d 99 (P.R. 1979). In the instant case, the petitioner has failed to set forth any allegation that the respondents actively or deliberately concealed the alleged conspiracy so as to toll the applicable statute of limitations. Therefore, the general rule cited above governs this action and the statute of limitations must run from the last wrongful act of Huntsville Hospital and Jeff Hamilton alleged in the complaint. *Singleton v. City of New York*, 632 F.2d 185 (2nd Cir. 1980), *cert. denied* 450 U.S. 920, 101 S.Ct. 1368, 67 L.Ed.2d 347 (1981).

The petitioner's complaint alleges no culpable conduct on the part of these respondents after January 4, 1990. In fact, there is no allegation of *any* conduct by Huntsville Hospital or Hamilton after January 4, 1990. Because the petitioner's suit was not filed until January 10, 1992, the applicable statute of limitations bars the petitioner's action against Hamilton and Huntsville Hospital and the Eleventh Circuit correctly affirmed the district court's dismissal of the case.

II. THE ROUTINE ASSESSMENT OF COSTS AGAINST THE PETITIONER AS THE LOSING PARTY IN THE LAWSUIT WAS NOT ERROR AND DOES NOT MERIT REVIEW BY THE COURT.

Both the district court and the Eleventh Circuit awarded costs to the respondents after entering judgment in their favor. The petitioner contends that this assessment of costs merits review by the Court because taxing costs to the petitioner somehow erroneously implies that the respondents were "prevailing parties." Actually, the respondents did prevail both in the district court and on appeal, and the assessment of costs against the petitioner as the losing party in the lawsuit was not only permissible but routine.

The Federal Rules of Civil Procedure provide that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs . . . " Fed. R. Civ. P. 54(d). Where an action is

dismissed for failure to state a claim upon which relief may be granted, as occurred in the present case, the defendant is a "prevailing party" to whom costs are to be awarded. *See, e.g., Burda v. M. Ecker Company*, 954 F.2d 434, 440 (7th Cir. 1992); *Lepucki v. Van Wormer*, 587 F.Supp. 1390, 1394 (N.D. Ind. 1984), *aff'd per curiam*, 765 F.2d 86 (7th Cir.), *cert. denied* 474 U.S. 827, 106 S.Ct. 86, 88 L.Ed.2d 71 (1985). As this Court has noted, liability for costs is a "normal incident of defeat." *Delta Airlines, Inc. v. August*, 450 U.S. 346, 352, 101 S.Ct. 1146, 1150, 67 L.Ed. 2d 287 (1981). A civil rights litigant is treated no differently than litigants in other cases with regard to taxation of costs, *Poe v. John Deere Company*, 695 F.2d 1103, 10108 (8th Cir. 1982), and the district court's taxation of costs to the petitioner was not error.

The Eleventh Circuit's taxation of costs on appeal was also appropriate. The Federal Rules of Appellate Procedure provide that, when a judgment is affirmed, "costs shall be taxed against the appellant unless otherwise ordered . . ." Fed. R. App. P. 39(a). In accordance with this rule, costs were taxed against the petitioner when the district court's judgment was affirmed by the Eleventh Circuit. The petitioner's contention that this routine assessment of costs merits the Court's review is based upon an erroneous belief that a party in a civil rights action must qualify as a "prevailing party" under 42 U.S.C. § 1988 in order to be awarded court costs. As support for her argument, the petitioner cites only *Farrar v. Hobby*, __ U.S. __, 113 S.Ct. 566, 121 L.Ed. 2d. 494 (1992) and *Hewitt v. Helms*, 482 U.S. 755, 107 S.Ct. 2672, 96 L.Ed. 2d 654 (1987), two cases in which the Court addressed the standard for awarding attorney's fees to plaintiffs in civil rights cases. These decisions have no application to the case at bar, and the petition for writ of certiorari is due to be denied.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari is due to be denied.

Respectfully submitted,

Joe W. Campbell
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Jeffrey T. Kelly

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Jeff Hamilton and the Health Care Authority of the City of Huntsville d/b/a/ Huntsville Hospital

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been served upon the attorneys of record for this cause, by first-class mail, postage prepaid, on this the 8th day of July, 1993, as follows:

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441
Non-Argument Calendar

D.C. Docket No. 92-N-103

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE;
WIKLE, THORNTON, HOLCOMBE & ASSOCIATES, INC.;
HEALTHCARE AUTHORITY,
THE CITY OF HUNTSVILLE, dba Huntsville Hospital;
STEVE HETTINGER; ERNEST KAUFMAN;
BILL KLING, JR.; JAMES PUTNAM;
RICHARD SHOWERS; JAMES WALL, JR.;
ERROLL FITZPATRICK; LARRY P. HALL;
RICHARD LILES; CHARLES PERRY; JEFF HAMILTON;
JAMES D. THORNTON, III,
Defendants-Appellees.

Appeal from the United States District
for the Northern District of Alabama

(March 3, 1993)

Before ANDERSON, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

Appellant Cordelia Ann Bodie ("Bodie"), filed a pro se civil rights complaint under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Alabama alleging that

the defendants conspired to violate her constitutional rights. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. Moreover, the district court held that Bodie's vague and conclusory allegations of conspiracy were insufficient to state federal constitutional claims.

Our review of the record persuades us that the district court was correct in dismissing Bodie's complaint. We have consistently held that mere conclusory allegations are insufficient to state a claim under 42 U.S.C. § 1983, particularly for conspiracy claims. *See Oladeinde v. City of Birmingham,* 963 F.2d 1481, 1485087 (11th Cir. 1992) (vague allegations, unsupported by specific facts, constitute no basis for a section 1983 action); *Fullman v. Graddick*, 739 F.2d 553, 556 (11th Cir. 1984) ("[i]n civil rights and conspiracy action,... more than mere conclusory, notice pleading is required"). Furthermore, absent a loss of pay or rank, there is no Fourteenth Amendment interest implicated by job transfer. *See Oladeinde*, 963 F.2d at 1486.

Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right.

For the foregoing reasons, we affirm the judgment of the district court.[1]

AFFIRMED.

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[1] There is also pending in this cause the appellees' motions to strike portions of appellant's brief which we deny as moot.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CV-92-N-0103-NE

CORDELIA ANN BODIE,
Plaintiff,

vs.

CITY OF HUNTSVILLE, et al.,
Defendants.

Order of Dismissal

This civil action is before the court on motion of all the defendants to dismiss pursuant to Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim upon which relief can be granted. The motions have been briefed and submitted for decision. After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than twenty pages of single spaced, typewritten, legal silliness. The motions to dismiss will be granted and the action will be dismissed.

According to the complaint, as last amended, the plaintiff Cordelia Ann Bodie was employed by the City of Huntsville, Alabama, as City Nurse from May 19, 1976, until July 30, 1990, when she resigned her employment. She claims that the defendants conspired to create intolerable working conditions so as to deprive her of the right to employment with the City of Huntsville. The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. Vague and conclusory allegations of conspiracy are insufficient

as a matter of law to state federal constitutional claims. *Fullman v. Graddick*, 739 F.2d 553 (11th Cir. 1984).

Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right. Almost without exception, she recounts events having to do with the decision of the City of Huntsville to cease the operation of a City Clinic, of which she was director, and to transfer the functions of that clinic to a public hospital, defendant Healthcare Authority of Huntsville. She claims that she was forced to resign her employment after she was transferred to the city jail because of intolerable working conditions but fails to allege facts which, if proven, would demonstrate that conditions were, in fact, intolerable. She does not claim that she filed any grievance concerning the alleged conditions at the jail. *See, Garner v. Wal-Mart Stores, Inc.*, 807 F.2d 1536 (11th Cir. 1987).

As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney fees under 42 U.S.C. § 1988.

The action is **DISMISSED** and costs are taxed against the plaintiff.

Done, this 22nd of April, 1992.

/s/Edwin L. Nelson
EDWIN L. NELSON
UNITED STATES
DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE; WIKLE, THORNTON,
HOLCOMBE & ASSOCIATES, INC.
HEALTHCARE AUTHORITY,
THE CITY OF HUNTSVILLE, dba Huntsville Hospital;
STEVE HETTINGER; ERNEST KAUFMAN;
BILL KLING, JR.; JAMES PUTNAM;
RICHARD SHOWERS; JAMES WALL, JR.;
ERROLL FITZPATRICK; LARRY P. HALL;
RICHARD LILES; CHARLES PERRY; JEFF HAMILTON;
JAMES D. THORNTON, III,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION FOR REHEARING

BEFORE: ANDERSON, DUBINA, and CARNES, Circuit Judges.

PER CURIAM:

The petition for rehearing filed by appellant Cordelia Ann Bodie is denied.

ENTERED FOR THE COURT:
/s/ JOEL F. DUBINA
United States Circuit Judge

April 12, 1993